

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Petitioner,

v.

MICROSOFT CORPORATION, et al.,

Respondents.

Case No. 2:15-cv-00102-RSM

ORDER TO SHOW CAUSE AND TO
SET BRIEFING SCHEDULE

This matter comes before the Court upon Motion for Status Conference by Intervenor Microsoft Corporation (“Microsoft”) (Dkt. # 6), as well as request for issuance of a Show Cause Order by Petitioner the United States (*see* Dkt. # 1). Microsoft moves the Court to hold a scheduling conference prior to acting on Petitioner’s request for a show cause order to address various preliminary matters. As set forth in this Court’s parallel order in *United States v. Mundie*, C15-103, the Court finds the issues raised in Microsoft’s motion to be largely moot and the remaining procedural matters readily capable of resolution by the parties without the Court’s intervention. Accordingly, the Court denies Microsoft’s request for a scheduling conference.

The Court finds that Petitioner has made the requisite *prima facie* showing to obtain enforcement of summonses with respect to each of the petitions in this consolidated action. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964). Petitioner has submitted a declaration

1 of the responsible Internal Revenue Service (“IRS”) investigating agent in support of each
2 petition, attesting to the lawful purpose of its investigations, the relevance and necessity of the
3 inquiries, and the satisfaction of administrative steps for issuance and service of summons.

4 *See United States v. Clarke*, 134 S.Ct. 2361, 2365 (2014) (noting that to satisfy its initial
5 burden, the IRS “usually files an affidavit from the responsible investigating agent”).

6 Accordingly, the burden shifts to the taxpayer to show cause, at an enforcement hearing, why
7 the summons should not be enforced. *United States v. Gilleran*, 992 F.2d 232, 233 (9th Cir.
8 1993).

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10 The only question remaining concerns the scheduling deadlines to precede the show
11 cause hearing. Microsoft represents that it will file a motion for an evidentiary hearing,
12 pursuant to *United States v. Clarke*, 134 S.Ct. 2361, which would be efficiently considered
13 prior to the hearing on issuance of summons. The Court agrees. As scheduling issues
14 pertaining to a putative evidentiary hearing and the instant show cause order may be
15 efficiently resolved without Court intervention, and in order to conserve judicial resources,
16 the Court instructs the parties to confer as to an appropriate briefing and hearing schedule and
17 to submit their proposed deadlines with the Court within five (5) days of the entry of this
18 Order.

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20 Accordingly, it is hereby ORDERED that:

21 (1) Microsoft’s Motion for Status Conference (Dkt. # 6) is DENIED.

22 (2) Respondents in these consolidated cases or their counsel are ORDERED to show
23 cause before United States Judge Ricardo S. Martinez why they should not be
24 compelled to comply with the Internal Revenue Service designated summonses
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1 served upon them, in accordance with the timeline to be conferred upon forthwith
2 by the parties and entered by the Court.

3 (3) The parties are directed to meet and confer regarding deadlines for briefing
4 Microsoft's intended motion for evidentiary hearing as well as the instant show
5 cause hearing. The parties are further directed to submit to the Court proposed
6 deadlines, including the date for the show cause hearing, within five (5) days of
7 the entry of this Order.

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9 (4) A copy of this Order, together with the consolidated petitions and attached
10 declaration and exhibits, shall be served upon Respondents' counsel James M.
11 O'Brien in accordance with Fed. R. Civ. P. 4, within 30 days of the date that this
12 Order is served upon counsel for the United States or as soon thereafter as
13 possible. Pursuant to Fed. R. Civ. P. 4.1(a), the Court hereby appoints Revenue
14 Agent Douglas M. Odell, and all other persons designated by him, to effect service
15 in this case. Service may also be effectuated by the United States Marshal's
16 Service.

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18 (5) Proof of any service performed pursuant to paragraph 4 above shall be filed with
19 the Clerk as soon as practicable.

20 (6) At the show cause hearing, the Court will consider all issues raised by
21 Respondents. Only those issues brought into controversy by the responsive
22 pleadings and supported by affidavit or declaration will be considered. Any
23 contested allegation in the petitions will be considered admitted.

24 (7) Respondents may notify the Court, in a writing filed with the Clerk and served on
25 counsel for the United States in Washington, D.C. at least 14 days prior to the date
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1 to be set forth for the show cause hearing, that Respondents have no objection to
2 enforcement of the summons. The Respondents' appearance at the hearing will
3 then be excused.

4 Dated this 13th day of February 2015.

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7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE
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